HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.28764 of 1998

3.10.2007

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Between

K.Srinivasa Rao ..Petitioner

AND

The Divisional Manager, L.I.C. of India, Rajahmundry and others ..Respondents

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:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.28764 of 1998

There is no representation on behalf of the petitioner, inspite of repeatedly adjourning the matter. I heard Sri M.V.Suresh, learned Standing counsel for the respondents.

The case of the writ petitioner as was set up in the pleadings, is that he joined the Life Insurance Corporation (henceforth referred to as "the Corporation") on 8.11.1971 as a Clerical Assistant and he worked as such till 6.4.1992, the date on which he was relieved after accepting his resignation. Thus, he has rendered more than twenty years of continuous service to the Corporation. From 28.6.1995, in exercise of the powers conferred under Section 48 of the Life Insurance Corporation Act, 1956 (for short, "the Act"), the Central Government framed the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (henceforth referred to as "the Rules"). However, these rules are deemed to have come into force on 1.11.1993. The various expressions found in the Rules are defined in Rule 2. The expression 'employee' has been defined in Rule 2(j) of the Rules as follows:

> "(j) 'employee' means any person employed in the service of the Corporation on full time work on permanent basis and who opts and is governed by these rules but does not include an employee retired before the commencement of these rules and who is drawing pension from the Pension

> Fund of the Oriental Government Security Life Assurance company Limited in accordance with sub regulation (2) of regulation 76 of the Life Insurance Corporation of India (Staff) Regulations, 1960, made under the Act".

Rule 3 which dealt with the applicability of these Rules makes it clear that these Rules shall apply to all such employees who were in the service of the Corporation on or after 1.1.1986, but had retired before 1.11.1993 and who exercised an option in writing within 120 days from the notified date to become member of the Fund and at the same time, refund within sixty days after the expiry of the said period of 120 days the entire amount of the Corporation's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation. These Rules are also rendered applicable to those who have retired between 1.11.1993 and the notified date and exercised option to become member of the Fund and indulged in the same exercise as is referred to supra. These Rules are also applicable to those who are in service of the Corporation before the notified date and continued to be in the service of the Corporation subsequently. Those who joined the service of the Corporation after the notified date are automatically brought under the purview and sweep of these Rules. Undoubtedly, the Pension Scheme is a well thought out social welfare measure undertaken to provide for assured assistance in the evening of the life of the servants of the Corporation. Rule 14 which dealt with the qualifying service to

secure the pension has been spelt out as a minimum of ten years of service to the Corporation. Importantly, Rule 23 provided for forfeiture of the past service for the purpose of the pensionary benefits in certain contingencies and circumstances. It is therefore appropriate to set out Rule 23 in full:

> "23. Forfeiture of service:-- Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefit".

Thus, the Corporation has rendered such of those employees who have been dismissed or removed or terminated or compulsorily retired or those who resigned from the service of the Corporation, as ineligible to qualify for the pensionary benefits by virtue of the forfeiture of their past service to the Corporation. Therefore, in terms of Rule 23 of the Pension Rules, 1995, the writ petitioner who has tendered his resignation to the service of the Corporation would not have become qualified to receive the pensionary benefits at all. But however, as noticed supra, he has tendered the resignation to the service of the Corporation prior to 1.11.1993 and the Pension Rules having been made applicable to all such employees who are in the service of the Corporation as on 1.1.1986, he would have fallen within the sweep of these Rules if only his case stands out from Rule 23.

The contention sought to be canvassed by the writ petitioner as set out in the pleadings is that at the time of his intending to quit the service of the Corporation, there is only one

mode of securing the relief from the service i.e. by way of voluntary retirement in terms of Regulation 19 (2-A) of the Life Insurance Corporation of India (Staff) Regulations, 1960 and the said Regulation 19 (2-A) stipulated that such of those employees who have completed the age of 55 years are permitted to retire after giving three months' notice in writing to the appointing authority and since he did not have 55 years of age, he could not get the benefit of voluntary retirement and therefore, he had to resign the service to secure relief from the service of the Corporation. He therefore, contends that his resignation from the service of the Corporation shall not result in forfeiture of his past service for the benefit of the Pension Scheme in terms of Rule 23 as framed now. While it is true that at the time when the writ petitioner had tendered his resignation to the service, the Pension Scheme has not been introduced by the Corporation. As is noticed, it came into force on 28.6.1995. It is also true that the Pension Scheme is rendered applicable to all employees who are in the service of the Corporation on 1.1.1986. But however, Rule 23 has specifically recognized the right in the hands of the Corporation to forfeit the past service of such of those employees who have suffered dismissal or removal or termination or those who have resigned to their service. Unless, the said right of forfeiture in the hands of the Corporation is held as bad, the case of the writ petitioner cannot get attracted. While the sanction of pension is to be recognized not as a bounty, but as a social welfare measure in recognition of the principle of "deferred payment" for the past service, but nonetheless, the said right is hedged by certain conditions such as bearing good moral conduct, both while in service and

beyond, and usefulness to the employer. All pension Schemes unanimously disqualify such employees who have suffered the dismissal or removal from service. Similarly, the majority of the pension schemes also disqualify such of those employees who have tendered resignation voluntarily to the service. Therefore, in the absence of any material to come to the conclusion that recognition of such a right in the hands of the employer to forfeit the past service in certain circumstances is bad, the applicability of the Pension Scheme in the cases like that of the petitioner, cannot be extended. While the employer recognized his obligation to make payment for the past service rendered by the employee, but nonetheless, even such rights have got to ensure the continued good conduct. It is therefore not totally unacceptable to recognize the right of the employer to forfeit the past service of the employee and get rid of the obligation to pay the pension for the past service of the employee.

In fact, the learned counsel for the respondents has pressed into service the judgment rendered by the Gujarat High Court in Special Civil Application No.654 of 1998 which dealt with a similar case of an employee of the Corporation who tendered the resignation to his service on 10.1.1995 after having rendered more than ten years of service to the Corporation. A learned Single Judge of the Gujarat High Court had occasion to consider this very question and has drawn support from a Division Bench judgment of the same High Court rendered in Letters Patents Appeal No.574 of 1997 dated 5.11.1998 and he had come to the conclusion that Rule 23 of the Pension Rules of the Corporation is neither *ultra vires* Article 14 of the Constitution of India nor is it invalid for any

other reason.

The learned counsel for the respondents has also placed reliance upon a judgment rendered by the Supreme Court in **Union of India vs. Rakesh Kumar**[1] to drive home his contention that characteristically, there is any amount of difference between cessation of employment by way of resignation from other modes of bringing about such termination of relationship for having a bearing upon the right to receive the pension.

In view of my findings that the right recognized in the hands of the employer viz., the Life Insurance Corporation of India to forfeit in certain circumstances the past service as not violative in principle, of any rights recognized in favour of the writ petitioner, the writ petition deserves to be dismissed. It is accordingly, dismissed, but however, without costs.

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NOOTY RAMAMOHANA RAO.J.

3.10.2007
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[1] 2001 (2) SLR 261